

REMARKS

The Office Action dated June 7, 2006, has been received and carefully noted. The above amendments to the claims, and the following remarks, are submitted as a full and complete response thereto.

Claims 22-43 are currently pending in the application of which claims 22, 34, and 43 are independent claims. Claims 22-42 have been amended, and claim 43 has been added, to more particularly point out and distinctly claim the invention. No new matter has been added. Claims 22-43 are respectfully submitted for consideration.

Claims 22, 27-29, 31-35, and 39-42 were rejected under 35 U.S.C. 103(a) as being anticipated by EP 0461314 of Feldman ("Feldman") in view of a reference to Shin et al. ("Shin"), which the Office Action mistakenly identified as U.S. Patent No. 6,282,270, but which is actually U.S. Patent Application Publication No. 2003/0068984 (U.S. Patent No. 6,282,270 is to Porter, and is not relevant to the present application). With regard to independent claims 22 and 34 the Office Action took the position that Feldman discloses all of the features of the claims except "that the device adapted to transmit or receive burst signals to the antenna array which burst signals include a fixed training sequence; and a control controlling the detector so as to detect the output of the power amplifier only during the time of output of the training sequence, wherein the device is adapted to control the power based on the detected output power." The Office Action cited Shin to remedy the deficiencies of Feldman. Applicants respectfully traverse this rejection, because Shin is not proper prior art.

The present application is entitled to the priority of March 7, 2002, because it is a national stage application of PCT/EP02/02518, filed March 7, 2002. Shin, in contrast, was published April 10, 2003, based on an application filed October 7, 2002. Shin claims priority to Provisional Patent Application 60/328,327, (“the provisional application”) filed October 9, 2001. Shin, however, is not entitled to the priority date of the provisional application for the subject matter that the Office Action relied upon, and therefore is antedated by the present application.

The Office Action cited paragraphs 0014-0017 of Shin. These paragraphs are not present in the provisional application, nor does the subject matter appear to have been discussed therein. For example, in reviewing the provisional application, Applicants cannot locate any reference to the concept of a “training sequence.” Accordingly, Applicants respectfully submit that Shin is proper prior art to the present application with regard to the subject matter of the present application’s claims.

As MPEP 2136.03 explains, “Portions of the patent application which were canceled are not part of the patent or application publication and thus cannot be relied on in a 35 U.S.C. 102(e) rejection over the issued patent or application publication.” See also, *Ex parte Stalego*, 154 USPQ 52 (Bd. App. 1966). Likewise, subject matter that is disclosed in a parent application, but not included in the child continuation-in-part (CIP) cannot be relied on in a 35 U.S.C. 102(e) rejection over the issued or published CIP. *In re Lund*, 376 F.2d 982, 153 USPQ 625 (CCPA 1967). By the same rationale, if the

earlier applications did not disclose the subject matter, a later application cannot be used as a reference under 35 U.S.C. 102(e) as of that earlier date.

Applicants respectfully submit that the rejection cannot stand without Shin, and thus it is respectfully requested that this rejection be withdrawn.


Claims 24-26, 30, and 36-38 were rejected under 35 U.S.C. 103(a) as being unpatentable over Feldman in view of Shin and further in view of U.S. Patent Application Publication No. 2002/0177417 of Visser ("Visser"). This rejection also relies on (and cannot stand without) Shin, and, thus, this rejection is respectfully traversed, and it is respectfully requested that this rejection be withdrawn.

It is respectfully submitted that each of claims 1-43 recite subject matter that is useful, novel, and non-obvious. It is, therefore, respectfully requested that all of claims 1-43 be allowed, and that this application be passed to issue.

If for any reason the Examiner determines that the application is not now in condition for allowance, it is respectfully requested that the Examiner contact, by telephone, the applicants' undersigned attorney at the indicated telephone number to arrange for an interview to expedite the disposition of this application.

In the event this paper is not being timely filed, the applicants respectfully petition for an appropriate extension of time. Any fees for such an extension together with any additional fees may be charged to Counsel's Deposit Account 50-2222.

Respectfully submitted,


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Enclosures: Additional Claim Fee Transmittal
Petition for Extension of Time
Check No. 15510